

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL L. ROBINSON,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 196813

Recorder's Court

LC No. 95-012971

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and larceny from a person, MCL 750.357; MSA 28.589, and sentenced to concurrent terms of imprisonment of five to ten years and one to ten years, respectively. Defendant appeals as of right. We affirm.

Defendant argues that his trial counsel rendered ineffective assistance of counsel when she failed to impeach the victim with a prior inconsistent statement contained in her written statement to the police. Defendant failed to make a testimonial record in the trial court in conjunction with a motion for a new trial or an evidentiary hearing and, therefore, appellate review is limited to the facts contained in the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). The written statement of the victim is not found in the record.

On the record before us, defendant has failed to establish that his trial counsel's performance was constitutionally deficient or that, but for any deficiency in counsel's performance, there is a reasonable probability that the result of the proceeding would have been different and that the result of the proceeding was fundamentally unfair or unreliable. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski